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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 614 OF 2003

Namdev Bhau Gare ... Appellant

V/s

The State of Maharashtra ... Respondent

Ms. Smita Gaidhani, advocate appointed for the appellant.

Mr. A.S. Shitole, A.P.P. for the State.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 20TH MARCH, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. By this appeal, the accused appellant challenges his conviction and sentence under Sections 394 and 302 of the Indian Penal Code. He has been convicted and sentenced to suffer life imprisonment for the offence punishable under Section 302 of the Indian Penal Code and rigorous imprisonment for 10 years for the offence punishable under Section 394 of the Indian Penal Code. Both these sentences are to run concurrently. The accused has been acquitted for the offence punishable under Section 201 of the Indian Penal Code.

2. The prosecution has alleged that on 14.5.2001 at 11.00 a.m., the accused robbed the victim Manjulabai of her gold ornaments worth Rs.15,000/- by assaulting her. This assault led to Manjulabai's death. According to the prosecution, the incident occurred in a forest when Manjulabai was returning home after attending the pre-nuptial ceremonies of the son of Kashinath at village Suryamal. According to the prosecution, the accused appellant who was also present at Kashinath's house to participate in the ceremonies left Kashinath's house together with Manjulabai at around 10.00 a.m. Manjulabai did not return home that night. Her family thought that she had spent the night at Kashinath's house at village Suryamal. When she did not return the next morning, her husband and son looked for her. Rohidas, her son, found her body in a ditch in the forest and then lodged a police complaint. The accused was arrested and chargesheeted under Sections 394, 302 and 201 of the Indian Penal Code. His trial was committed to Sessions. The III Ad-hoc Additional Sessions Judge, Thane has convicted the accused.

3. Eleven witnesses have been examined by the prosecution in support of its case. PW-1 is the eye witness to the incident. He has stated that on

14.5.2001 he had taken his goats to graze in the Balsunda jungle. At about 11.30 a.m. while he was in the jungle, he heard a lady shout. According to this witness, he saw the accused had caught hold of the woman. There was a scuffle between them. The accused then picked up a stone and beat the woman with it near the ear and on the jaw. He then dragged the woman towards the valley. The witness states that he returned to his village and told several people but no one believed him. The witness recognised the accused since he had a grocery shop in the village. In the cross-examination, this witness has stated that his statement was recorded 3 to 4 days after the incident and the police recorded his statements about 2 or 3 times. The last statement was recorded on 11.8.2001. He has described the spot where the incident occurred. He has also admitted that he was frightened when he saw the incident. According to this witness, he saw the incident from the distance of about 300 ft. and there were about 10 to 15 mango trees between him and the spot of the incident. Although he had reported the incident to his mother Yamunabai, nobody believed him. This witness has mentioned that the victim was dressed in a blue nine yards saree.

4. The next witness who has been examined is Kashinath.

This witness has stated that the ceremonies concluded at about 9.00 a.m. in the morning on 14.5.2001 after which the persons present had their meal and left at about 10.00 a.m. He has spoken about the presence of Manjulabai and the accused in his house. This witness has admitted in the cross-examination that he did not know the exact time when Manjulabai or the accused left his house. He has mentioned that Manjulabai and the accused were first cousins, their mothers being sisters. He has denied the suggestion that there was a dispute over land between the families of Manjulabai and the accused.

5. The next witness PW-3 examined is the panch witness who has spoken about the inquest panchanama. He has stated that the body was decomposed. This witness has also proved the spot panchanama and the seizure panchanama. He has spoken about the blood stains being present on the dry leaves and on 2 or 3 stones at the spot. Although broken pieces of bangles were found at the spot, they were not seized according to this witness. The victim’s slippers were also found near the body.

6. The arrest panchanama has been proved by PW-4. The accused was arrested on 24.5.2001 i.e. 10 days after

the incident.

7. A pouch was found with the accused containing 7 keys. PW-5 was present at the victim's house when the police opened 4 locks with those keys. He has proved the panchanama at Exh.15.

8. The medical officer has been examined as PW-6. The post-mortem examination has been conducted at the spot of the incident since the body had decomposed. He has opined that the probable cause of death was "cardio respiratory failure due to intracranial haemorrhage, secondary to depressed fracture of right temporal bone." The medical officer has stated that injuries could have been caused by a blunt and hard object and that the wounds had been inflicted about 72 hours earlier on the victim. He has admitted that the fracture of the skull could be possible because of a fall from a height on a stone. The post-mortem examination indicates that the death of the victim may have occurred about 12 to 14 hours after her last meal.

9. PW-7, another panch witness, has spoken about the recovery made of the gold ornaments at the instance of the accused. The recovery was made from the Balsunda jungle. The gold ornaments were found buried near a

tree. The accused also produced a pouch containing 7 keys which PW-5 has spoken about.

10. PW-8 is the victim's husband. He learnt of the incident from PW-9, his son. According to this witness, he saw the dead body in the jungle but it was impossible to see it from a distance of more than 15 ft. due to the thick foliage.

11. PW-9 has stated that since his mother did not return after the ceremonies at Kashinath's house till 16.5.2001, he went to Suryamal village and enquired with Kashinath who informed him that his mother had left alongwith others including the accused. While returning home, the witness states that there was a foul smell emanating from a spot near the mango tree on the boundary of the village. He found that it was his mother's corpse lying at that spot. The gold ornaments that she had worn were missing.

12. Investigations have been carried out by PW-10 and later by PW-11.

13. The learned advocate appearing for the accused has criticised the testimony of the eye witness by submitting that it is riddled with several contradictory

statements. She questions the veracity of this witness as according to her it would have been impossible for anybody to see the incident and to identify the accused from a distance of 300 ft. through a thickly wooded jungle. She submits that it is impossible that from this distance the witness would have been able to identify the stone which was allegedly used by the accused to kill the victim. The learned advocate also questions the conduct of the police in recording the statements of this witness two or three times and then finally recorded the same on 11.8.2001 i.e. three months after the incident. In our opinion, the criticism of the learned advocate is unjustified. The witness has spoken of the victim wearing a blue nine yards saree. The inquest panchanama which has been proved by PW-3 also mentions that the victim had worn a blue nine yards saree. It is true that this witness does not speak about the accused removing the gold ornaments from the victim’s body or that he snatched her ornaments before she died. However, this by itself would not cast a doubt on the deposition of this witness. The contradictions and the omissions contained in the deposition are not material and do not adversely affect his testimony. PW-1 is a natural witness and we see no reason to disbelieve his testimony.

14. The learned advocate for the accused submits that PW-8 contradicted the testimony of PW-1 when he states that it was impossible to see the body from a distance of more than 15 ft. while PW-1 has stated that he could see the incident from the distance of about 300 ft. This, in our view, is not a major contradiction which proves fatal to the case of the prosecution. Besides the ocular evidence of PW-1 on record, there are other factors which are incriminating. The clothes of the deceased have been identified by PW-1. The inquest panchanama shows that the body of the victim was found clothed in a blue nine yard saree which PW-1 has spoken about. Apart from this, the ornaments have been recovered at the instance of the accused. The learned advocate states that the value of these ornaments was not such as would induce the accused who was running a grocery shop in the village to stake his reputation. She submits that the deceased and the accused were cousins and he had no motive for killing the victim. Although these submissions appear to be persuasive, we are not inclined to accept them. The ocular testimony of PW-1 is supported by the recoveries made and the seizure of a pouch containing 7 keys, four of which opened the locks in the victim’s house.

15. The learned advocate then submits that, if the

post-mortem report is to be believed, then the victim had not had a meal for 12 to 14 hours prior to her death. She submits that, according to the prosecution, the victim was killed at about 11.00 a.m. on 14.5.2001. PW-2 has spoken of the persons who participated in the ceremony having had a meal before leaving. She submits that if this testimony is to be believed, then the post-mortem report cannot be accepted. According to the learned advocate, the prosecution has not been able to prove its case beyond reasonable doubt. This submission cannot be countenanced. There is no evidence that death of the victim was instantaneous. PW-1 had seen the accused assaulting the victim and inflicting injuries on her. The possibility of the victim succumbing to the injuries some time later cannot be ruled out.

16. In our view, the evidence of PW-1 coupled with the recovery of gold ornaments at the instance of the accused and the blood stained stone found at the spot, all point to the guilt of the accused.

17. We have scrutinized the evidence on record and the judgment impugned. We have independently drawn the same conclusions as the Sessions Court. In this view of the matter, we have no other alternative but to dismiss the appeal.

18. Appeal dismissed.

Fees of the learned advocate appointed for the accused quantified at Rs.1,000/-.

(SMT. NISHITA MHATRE, J.) (D.G. DESHPANDE, J.)